

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Transportation Committee

BILL: CS/SB 2040

SPONSOR: Senator Garcia

SUBJECT: Driver Licenses/Foreign Nationals

DATE: April 7, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Meyer	TR	Fav/CS
2.	_____	_____	DS	_____
3.	_____	_____	CJ	_____
4.	_____	_____	GE	_____
5.	_____	_____	TA	_____
6.	_____	_____	_____	_____

I. Summary:

CS/SB 2040 (CS) provides the Department of Highway Safety and Motor Vehicles (department) shall issue or renew a driver's license to a foreign national who submits specified identifying documents and a valid driver's license from the foreign national's home country. The CS also provides the department must issue, under certain circumstances, a driving permit to a foreign national who enters the United States under the Cuban Adjustment Act and who may not be deported to his or her country of citizenship due to the absence of diplomatic relations between that country and the United States.

The CS creates sections 322.073 and 322.075 of the Florida Statutes.

II. Present Situation:

Driver's License Application

An application for a driver's license must be made to the department in a format designated by the department. The application must be sworn or affirmed by the applicant as containing truthful statements.¹ Section 322.08, F.S., prescribes the information that must be provided as part of the application, which includes:

- The applicant's full name, gender, social security card number, county of residence and mailing address, country of birth, and a brief description.
- Proof of date of birth satisfactory to the department.
- Proof of identity satisfactory to the department.

¹ Section 322.08(1), F.S.

- Whether the applicant has previously been licensed to drive and whether such driving privilege has ever been disqualified, revoked, or suspended, or whether an application has ever been refused.

Each application may include fingerprints and other unique biometric means of identity.

The proof of identity satisfactory to the department must include one of the following documents issued to the applicant:

- A driver's license record or identification card record from another jurisdiction that required the applicant to submit a document for identification which is substantially similar to the documents required under Florida law;
- A certified copy of a United States birth certificate;
- A valid United States passport;
- An alien registration receipt card (green card);
- An employment authorization card issued by the United States Department of Justice; or
- Proof of nonimmigrant classification provided by the United States Department of Homeland Security.²

It is unlawful for a person to use a false or fictitious name in any application for a driver's license or knowingly to make a false statement, knowingly conceal a material fact, or otherwise commit fraud in any application for a driver's license. It is also unlawful to knowingly possess any blank, forged, stolen, fictitious, counterfeit, or unlawfully issued driver's license, unless the possession is authorized by the department.³ Generally, a violation of these provisions is a felony of the third degree.

Under current law, the department may only issue driver's licenses to certain non-citizens for a limited period of time. Typically a driver's license is issued for a period of six years initially, and then is renewed for six years after expiration, as long as the licensee has a clean driving record for the three years preceding renewal. If the licensee has points assessed against the license within that three-year period, the renewal is only effective for four years. However, if a licensee proves his or her identity in an application for the license by means of an employment authorization card issued by the United States Department of Justice or by other proof of non-immigrant classification, then the driver's license expires four years after the date it is issued or upon the expiration date of the documents used to prove identity, whichever occurs first.⁴

Currently, all drivers' licenses issued by the department must bear a full-face photograph or digital image of the licensee. Specifically, s. 322.142, F.S., authorizes the department, upon receipt of the required fee, to issue to each qualified applicant for an original driver's license a color photographic or digital imaged driver's license bearing a full-face photograph or digital image of the licensee.

Foreign Nationals Driving Records

² Section 322.08(2)(c)1.-6., F.S.

³ Section 322.212(1)(a) and (5)(a), F.S.

⁴ Section 322.18(2), F.S.

Section 322.20(2), F.S., (see 2004-275, L.O.F.) requires the department to maintain records of driving convictions for persons holding foreign driver's licenses. The purpose of maintaining these records is to allow automobile insurers to examine these records to determine the risk posed by the particular driver and, therefore, charge automobile insurance rates associated to the risk.

Cuban Adjustment Act

The Cuban Adjustment Act (CAA) provides a procedure under which Cuban nationals or citizens, and their accompanying spouses and children, may obtain a status in the United States as lawful permanent residents. The act authorizes the U.S. Attorney General to grant permanent residence to Cuban nationals or citizens seeking adjustment of status if they have been present in the United States for at least one year after admission or parole and are admissible as immigrants. These applications for adjustment of status may be approved notwithstanding the fact the person may not meet the ordinary requirements for adjustment of status under the Immigration and Nationality Act. Since the caps on immigration do not apply to adjustments under the CAA, it is not necessary for the alien to be the beneficiary of a family-based or employment-based immigrant visa petition.⁵

Cuban-born persons who have entered the United States and subsequently been found to have engaged in conduct warranting deportation, but who are not subject to deportation under the Cuban Adjustment Act because of a lack of foreign relations with Cuba, may theoretically be eligible for a Florida driver's license under current law. According to the department, such persons are deemed to have legal presence in the United States, and could prove identification via proof of nonimmigrant classification provided by the United States Department of Homeland Security. In order to prove such nonimmigrant classification, applicants may produce the following documents:

- A notice of hearing from an immigration court scheduling a hearing on any proceeding;
- A notice from the Board of Immigration Appeals acknowledging pendency of an appeal;
- A notice of the approval of an application for adjustment of status issued by the United States Bureau of Citizenship and Immigration Services;
- Any official documentation confirming the filing of a petition for asylum status or any other relief issued by the United States Bureau of Citizenship and Immigration Services;
- A notice of action transferring any pending matter from another jurisdiction to Florida, issued by the United States Bureau of Citizenship and Immigration Services; or
- Order of an immigration judge or immigration officer granting any relief that authorizes the alien to live and work in the United States, including, but not limited to asylum.⁶

In addition, according to the department, many additional forms of documentation to prove nonimmigrant classification or identity from Cuban immigrants will be accepted. Since they are

⁵ U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *Cuban Nationals or Citizens Seeking Lawful Permanent Resident Status: Overview*, available at <http://uscis.gov/graphics/services/residency/CAA.htm> (last modified Sept. 9, 2003).

⁶ Section 322.051(1)(a)3.f., F.S.

in the United States lawfully, and since they may be able to show documentation proving identity or nonimmigrant classification, such Cuban persons not subject to deportation may currently be eligible for a Florida driver's license.

III. Effect of Proposed Changes:

Section 1 of the CS creates s. 322.073, F.S., to establish a process for the department to issue a driver's license to a foreign national. The license would be valid for two years or, if a nonimmigrant visa is required for entry into the United States by a driver license applicant, then a license is valid for the duration of an applicant's nonimmigrant visa, up to a maximum of six years. If the applicant is holding a nonimmigrant visa with less than six years' validity remaining on the nonimmigrant visa, then an issued license is only valid for the remaining duration. The applicant must submit certain documents to the department prior to the issuance or renewal of the driver's license. Documents required for submission must include:

- A valid passport from the home country of the applicant;
- A valid multiple-entry nonimmigrant visa issued to the applicant by the United States Government for applicants entering from a country not identified by the United States Department of Homeland Security Bureau of Citizenship and Immigration Services as a visa waiver country;
- A valid and current I-94 form issued by U.S. Citizenship and Immigration Services to the applicant by the United States Government; and
- A valid driver's license from the home country of the applicant.

Section 2 of the CS creates s. 322.075, F.S., to establish a process under which individuals who enter the United States under the Cuban Adjustment Act and who may not be deported because the United States does not maintain diplomatic relations with Cuba.

The applicant must:

- Meet all requirements for a Florida driver's license except ability to prove identity by the forms required in s. 322.08(2)(c), F.S;
- Present a form of identification acceptable to the department;
- Submit to fingerprint capture for a state and national criminal history records check; and
- Affirm he or she has not been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to any law relating to illegal drugs or a forcible felony, facilitating or furthering any act of terrorism or any federal crime related to terrorism, or money laundering, or conspiracy to commit any of these crimes; has not been designated as a terrorist or leader of an illegal drug enterprise; and will not travel to designated terrorist nations while the driving permit is valid.

Prior to issuing a driving permit under this new provision, the department must:

- Verify through the federal government the applicant is not classified as a terrorist or leader of an illegal drug enterprise;
- Verify the identity of the applicant using the fingerprints submitted. The CS does not specify by what means the department is to verify the identity using fingerprint data; and

- Conduct a state and national criminal history records check through the Florida Department of Law Enforcement (FDLE) and the Federal Bureau of Investigation (FBI) on the applicant using his or her fingerprints. The CS specifies a driving permit may not be issued or renewed to an applicant who has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to any law relating to illegal drugs or a forcible felony, facilitating or furthering any act of terrorism or any federal crime related to terrorism, or money laundering, or conspiracy to commit any of these crimes; is a habitual offender of laws relating to illegal drugs; has been designated as a terrorist or leader of an illegal drug enterprise by the United States Department of Justice; or has traveled to any country on the list of terrorists countries maintained by the United States Government.

A driving permit issued under the CS must have a background that distinguishes it from an ordinary driver's license, must meet the statutory image requirements that currently exist for driver's licenses, is valid for a period not to exceed two years, and is valid in Florida only. A statement must be prominently displayed that the permit is only valid for uses in Florida. The CS also establishes a process for renewing the permit. The permit remains property of the state and may be seized by a law enforcement officer who has a reasonable belief that a person possesses or is using the permit in violation of the law.

Each time a permit holder renews this driving permit, he or she is subject to all of the requirements for initial issuance. The department is authorized to cancel the driving permit upon determining the permit holder no longer meets the eligibility requirements for the permit.

The fee for the driving permit is to be established by the department, taking into consideration the costs associated with the background and security checks required under the CS and FDLE shall invoice the department for the fingerprints submitted each month. In addition, the CS provides the fees collected under this section must be deposited into the Highway Safety Operating Trust Fund.

Section 3 of the CS provides a February 1, 2006, effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

The CS authorizes the department to adopt fees for the issuance and renewal of driving permits authorized for certain foreign nationals.

B. Private Sector Impact:

This CS authorizes the department to assess fees from permit applicants to recoup costs relating to conducting criminal background checks and verifying security risks. Although the number of permits that may be issued, and the revenue that will be collected as a result is unknown, the number is expected to be very small. The department expects the cost to conduct state and federal criminal history background checks and to conduct a fingerprint identification check will cost the applicant approximately \$100.

C. Government Sector Impact:

This CS authorizes the department to assess fees from permit applicants to recoup costs relating to conducting criminal background checks and verifying security risks. However, the number of permits that may be issued and resulting revenue that will be collected is unknown. The CS will also require programming modifications to the Driver License Information System that will be absorbed within existing resources.

VI. Technical Deficiencies:

Section 1 of the CS authorizes DHSMV to issue a driver's license to an applicant who is a foreign national and who legally visits the state on a frequent basis, but who has not immigrated to the United States. The CS does not provide guidance as to what amount of visitation constitutes visitation on a "frequent basis."

Section 2 of the CS provides a driving permit issued under that section would only be valid in Florida, and such permit must state that fact on its face. Although another state is unlikely to recognize the permit as a valid driver's license, it is beyond the power of the Florida Legislature to determine for another state what it may or may not deem a valid driver's license or permit.

According to FDLE, neither it nor the FBI would likely be at liberty to divulge the existence of a flag for a suspected terrorist subject. Furthermore, FDLE may have some difficulty in accomplishing comprehensive checks for warrants from other states, and determining who has been designated as a terrorist or the leader of an illegal drug enterprise by the United States Department of Justice.

VII. Related Issues:

The department has expressed concerns about the effective date of the CS allowing sufficient time for implementation to make necessary modifications to the Driver License Software Systems and to address any issues with the contracted vendor providing the new Florida driver license system. The department suggests an effective date of July 1, 2006.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
